

BEFORE THE PERSONNEL APPEALS BOARD

STATE OF WASHINGTON

DIANNA SNYDER-WALSH,

Appellant,

v.

DEPARTMENT OF CORRECTIONS,

Respondent.

) Case No. DISM-01-0089

)
) FINDINGS OF FACT, CONCLUSIONS OF
) LAW AND ORDER OF THE BOARD

I. INTRODUCTION

1.1 **Hearing.** This appeal came on for hearing before the Personnel Appeals Board, WALTER T. HUBBARD, Chair, and GERALD L. MORGEN, Vice Chair. The hearing was held in the Superintendent's Conference Room at the Monroe Correctional Complex, Monroe, Washington, on September 20, 2002. RENÉ EWING, Member, did not participate in the hearing or in the decision in this matter.

1.2 **Appearances.** Appellant Dianna Snyder-Walsh was present and was assisted by Roy Johnson. Amy Cook, Assistant Attorney General, represented Respondent Department of Corrections.

1.3 **Nature of Appeal.** This is an appeal from a disciplinary sanction of dismissal for neglect of duty, gross misconduct and willful violation of agency policy for Appellant's failure to report to work or contact the institution regarding her absences.

1.4 Citations Discussed. WAC 358-30-170; Baker v. Dep't of Corrections, PAB No. D82-084 (1983); McCurdy v. Dep't of Social & Health Services, PAB No. D86-119 (1987); Rainwater v. School for the Deaf, PAB No. D89-004 (1989); Skaalheim v. Dep't of Social & Health Services, PAB No. D93-053 (1994); Aquino v. University of Washington, PAB No. D93-163 (1995).

II. FINDINGS OF FACT

2.1 Appellant Dianna Snyder-Walsh was a Correctional Officer 2 and permanent employee for Respondent Department of Corrections at the Monroe Correctional Complex. Appellant and Respondent are subject to Chapters 41.06 and 41.64 RCW and the rules promulgated thereunder, Titles 356 and 358 WAC. Appellant filed a timely appeal with the Personnel Appeals Board on November 16, 2001.

2.2 By letter dated October 2, 2001, Robert Moore, Superintendent of the Monroe Correctional Complex, informed Appellant of her dismissal effective at the end of her shift on October 18, 2001. Mr. Moore charged Appellant with neglect of duty, gross misconduct and willful violation of agency policy for Appellant's failure to report to work on May 27, 28, 29, 30 and June 3, 4, 5 and 6, 2001.

2.3 Appellant began her employment with the Department of Corrections in January 1989. On May 16, 1997, Appellant was placed on medical verification, and she was required to obtain written medical verification whenever she was absent from work due to personal or family illness/injury.

2.4 Appellant has been the subject of the following corrective and disciplinary actions:

- Memorandum dated December 7, 1994 addressing her excessive use of leave and warning her that continued excessive use of sick leave and/or unscheduled annual leave could result in further corrective/disciplinary action.

- Letter of reprimand dated October 2, 1997 for her failure to adhere to the requirements of her medical verification letter of May 16, 1997.
- Letter dated April 27, 1998 reducing her salary for three-months for neglect of duty, insubordination and willful violation of agency policy for failing to comply with the requirements of her medical verification letter of May 16, 1997 after failing to submit a doctor's slip for the entire period of her absences.
- Letter dated August 13, 1998 reducing her salary for six-months for neglect of duty, insubordination and willful violation of agency policy for failing to comply with the requirement of her medical verification letter of May 16, 1997 by failing to submit a doctor's slip for her reported sick leave absences.
- Letter of expectation dated November 9, 1999, clarifying acceptable medical verification.

2.5 At the outset of the hearing, the parties entered into the following stipulation of facts:

That on May 27, 28, 29, 30, June 3, 4, 5 and 6, Dianna Snyder-Walsh neither reported to work, nor contacted her Monroe Correctional Complex supervisory chain regarding her inability to report to work.

2.6 DOC Policy 830.150 requires any employee unable to report for duty (unscheduled leave) for any reason to notify his/her supervisor of the absence, the reason for the absence, and the anticipated date of return to work. Appellant was aware of this policy and requirement.

2.7 Robert Moore, Superintendent of the Monroe Correctional Complex, was Appellant's appointing authority when the discipline was imposed. In determining the level of discipline, Superintendent Moore reviewed Appellant's employment history with the department, including prior corrective and disciplinary action addressing her attendance problems. After his review, Superintendent Moore concluded that the department had employed a program of progressive discipline to impress upon Appellant the importance of improving her attendance and for calling in her absences. Superintendent Moore, however, did not see any positive changes in Appellant's work attendance.

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2 2.8 After considering Appellant's response to the charges, Superintendent Moore did not feel
3 that she presented any mitigating facts for her failure to notify the department about her inability to
4 report to work. Superintendent Moore was concerned with the impact of Appellant's absences on
5 the agency and other employees because her failure to notify the department of an absence required
6 the department to hold employees at work for mandatory overtime, which created an impact on the
7 employees and on the department, who was required to pay overtime. Superintendent Moore felt
8 that dismissal was appropriate based on Appellant's seven-year history of failing to report to work,
9 failing to notifying the department of her absences and failing to provide adequate medical
10 verification.

11 12 **III. ARGUMENTS OF THE PARTIES**

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14 3.1 Respondent argues that Appellant had a responsibility to report to work and if unable to do
15 so, to communicate with her employer her inability to report to work. Respondent argues that
16 Appellant received prior corrective and disciplinary action addressing her failure to report to work,
17 her failure to notify the institution of her inability to be at work, and her failure to follow the
18 attendance policy. Respondent argues that Appellant had a reasonable opportunity to demonstrate
19 improvement and that her failure to do so led to her dismissal. Respondent argues that Appellant's
20 misconduct caused undue hardship to the agency by requiring the use of extensive resources in
21 mandatory time for other employees, which also had an adverse impact to staff morale. Respondent
22 further argues that Appellant's absences hampered the safety and security of the complex, which
23 relies on its correctional officers to report to work. Respondent argues that dismissal was the
24 appropriate course of disciplinary action.

1 3.2 Appellant does not dispute the allegations, but she argues that the institution failed to follow
2 a program of progressive discipline, and that in this case, dismissal was too severe. Appellant
3 asserts that she was a good correctional officer and had a good employment record from 1989 to
4 1994. She contends, however, that she was required to be on leave after the birth of her son, who
5 was very sick. Appellant argues that her employer understood the circumstances that required her
6 to be off work after she accepted a lateral transfer to the institution. Appellant argues that it was not
7 her choice to spend state resources of overtime and that safety and security are not the issue here.
8 Appellant asserts that if the Department of Corrections had appropriate staffing, the staffing issues
9 could be resolved without blaming the employee.

11 IV. CONCLUSIONS OF LAW

13 4.1 The Personnel Appeals Board has jurisdiction over the parties hereto and the subject matter
14 herein.

16 4.2 In a hearing on appeal from a disciplinary action, Respondent has the burden of supporting
17 the charges upon which the action was initiated by proving by a preponderance of the credible
18 evidence that Appellant committed the offenses set forth in the disciplinary letter and that the
19 sanction was appropriate under the facts and circumstances. WAC 358-30-170; Baker v. Dep't of
20 Corrections, PAB No. D82-084 (1983).

22 4.3 Neglect of duty is established when it is shown that an employee has a duty to his or her
23 employer and that he or she failed to act in a manner consistent with that duty. McCurdy v. Dep't
24 of Social & Health Services, PAB No. D86-119 (1987).

1 4.4 Gross misconduct is flagrant misbehavior which adversely affects the agency's ability to
2 carry out its functions. Rainwater v. School for the Deaf, PAB No. D89-004 (1989).

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4 4.5 Willful violation of published employing agency or institution or Personnel Resources
5 Board rules or regulations is established by facts showing the existence and publication of the rules
6 or regulations, Appellant's knowledge of the rules or regulations, and failure to comply with the
7 rules or regulations. Skaalheim v. Dep't of Social & Health Services, PAB No. D93-053 (1994).

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9 4.6 Respondent met its burden of proof that Appellant failed to report to work as scheduled and
10 failed to call in her absences prior to the start of her shift. We are sympathetic to Appellant's need
11 to be absent from work, however, Appellant did not offer any compelling reasons for her failure to
12 comply with the directives of her supervisor to call in her absences before the beginning of her
13 work shift. Appellant's repeated failure to notify superiors of her absences at the beginning of her
14 work shift created an undue burden for the institution to arrange for other employees to work
15 overtime.

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17 4.7 Respondent followed an appropriate course of progressive discipline. However, Appellant's
18 attendance problems and her failure to call in absences continued. Appellant's continued pattern of
19 unexcused absences and her failure to call in as directed to do in the letter of expectation constitutes
20 neglect of duty, gross misconduct and willful violation of DOC Policy 830.150.

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22 4.8 Although it is not appropriate to initiate discipline based on prior formal and informal
23 disciplinary actions, including letters of reprimand, it is appropriate to consider them regarding the
24 level of the sanction which should be imposed here. Aquino v. University of Washington, PAB No.
25 D93-163 (1995).

1 4.8 Under the facts and circumstances of this case, we conclude that Respondent has proven that
2 the dismissal was warranted and not too severe a sanction. The appeal should be denied.

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4 **V. ORDER**

5 NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal of Dianna Snyder-Walsh is
6 denied.

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8 DATED this _____ day of _____, 2002.

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10 WASHINGTON STATE PERSONNEL APPEALS BOARD

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13 Walter T. Hubbard, Chair

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16 Gerald L. Morgen, Vice Chair
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